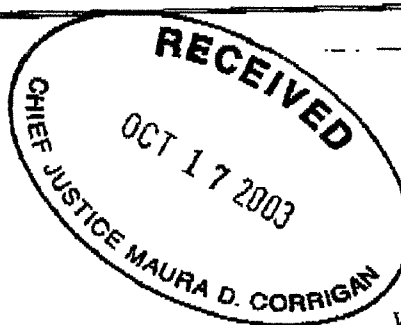




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October 15, 2003



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Lawrence T. Wysocki  
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Chief Justice Maura D. Corrigan  
Michigan Supreme Court  
Cadillac Place, 3034 W. Grant Blvd.  
Suite 8-500  
Detroit, MI 48202-6034

Re: ADM 2001-51; Proposed Amendment to MRE 404

Dear Chief Justice Corrigan,

We are writing to inform you that we support the proposed amendment to MRE 404. Our preference would be Alternative A, but we would support the adoption of either amendment.

Domestic violence crimes are unique. By definition domestic violence is a pattern of behavior, while the crime of domestic violence is a charge arising out of a single incident. Current rules of evidence often leave the jury with the inaccurate perception that the behavior forming the basis of the charge is isolated, and therefore, a minor incident. Yet, a defendant's history of domestic violence is predictive of future violent behavior. The cycle of violence is well established.

Another reason that the prior history is so important is because it does show the batterer's specific intent to make the victim fear an immediate battery. Batterers use "tools" to control their partners. The "tools" are physical assaults, verbal threats, financial isolation, and emotional degradation. Batterers have said that they will use whatever tool is necessary to keep control of their partner.<sup>1</sup> When it comes to prosecution, all the batterers' tools are used to put pressure on their partner to recant the incident, to "not remember," or to simply fail to appear for the trial. Consequently, prosecutors need this amendment as a tool to convince the jury that the batterer's acts were intentional.

Furthermore, domestic violence differs from an assault and battery because of the relationship. A person's willingness to use violence and the manner in which they use violence is different between persons in a relationship than it is between strangers. This is especially so when the relationship is marked by one person's domination over the other. The legislature made the distinction that the use of force is different in a

<sup>1</sup> Understanding Domestic Violence Behavior: Assailant Interviews, Michigan Department of Social Services-OTSD(1993).

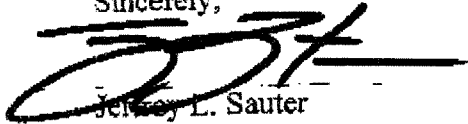
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relationship when it made it a separate offense. But under our current rules the jury hears only that the relationship existed. They are prevented from knowing the circumstances that put the event in context.

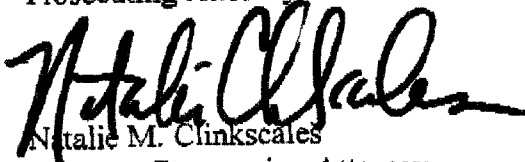
Also, we disagree with the advisory committee report that the number of false allegations of domestic violence would be as much as thirty percent. That claim, apparently attributed to an anonymous assistant prosecutor is plainly suspect. Victims of domestic violence often recant. But our experience, experience that we believe is reflective of the rest of the state, shows that generally, it is not a false report, it is the recantation that is false. Moreover, the recantation usually reflects a relationship with a history of violence.

For these reasons we urge the adoption of the proposed amendment. Thank you for your consideration of our comments.

Sincerely,



Jeffrey L. Sauter  
Prosecuting Attorney



Natalie M. Clinkscales  
Assistant Prosecuting Attorney

cc: Members of the Supreme Court  
Corbin Davis, Supreme Court Clerk